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To: Dunham, Sarah <Dunham.Sarah@epa.gov>

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Subject: EPA staff review of NHTSA draft preamble - responsiveness to EPA's 2/5/2020 comments provided to NHTSA

Importance: High

Dear Sarah,

Many of the OTAQ staff dropped everything else they were working on yesterday to perform the review that Karl Moor requested – to look at the draft of the SAFE preamble which NHTSA provided to you and Karl on Tuesday, March 24 at 8:38pm, and to review this draft to see to what extend NHTSA has responded to the EPA comments provided to NHTSA on 2/5/2020.

Attached you will find a EPA markup of the 3/24/2020 preamble, and also a three page summary noting our findings. I have also copied that information into this email.

As you and I discussed yesterday, we were not able to completely review the 3/24 version, but certainly the staff were able to review many of the comments we provided in February.

In a separate email, because of the size of the files, I will also send you the 2/5/2020 version we provided to NHTSA for reference.

Thanks
Bill

EPA Comments Not Addressed in the Latest (3/24/2020) Version of the NHTSA Pass-back of the SAFE Preamble, 3/26/2020

Summary:

In our review of the latest preamble sent by NHTSA on 3/24/2020, it appears that while NHTSA did incorporate a handful of the EPA comments provided to NHTSA on 2/5/2020, the vast majority of EPA's comments have not yet been addressed.

In the day we've had to review the latest preamble, we have identified more than 250 EPA comments that have not been addressed. In the time we have had, we were not able to finish a complete review. In this document, we provided a handful of specific examples. In the attached markup of the 3/24/2020 document, we highlight the specific text that does not reflect EPA's comments.

In addition, because the Final RIA largely mirrors the preamble, EPA's comments on the preamble should also be reflected in changes to the RIA.

Examples where EPA comments have not been addressed:

1. CAFE Model as "Superior" should be changed to "Reasonable"

Page 58 – this is the same language that we flagged for NHTSA on 2/5/2020. Our comments had recommended that the text be changed from "superior" to "reasonable" (consistent with the NPRM language), but that change has not been made:

"EPA's OMEGA model used in previous rulemakings never attempted to account for credit banking and, indeed, lacking a year-by-year structure, cannot account for credit banking. Therefore, at least with respect to this important CO₂ program flexibility, the CAFE model provides a superior basis for estimating actual impacts of new CO₂ standards."

Page 79 – this language does not address EPA's comment to delete the text regarding "significant technical advantages" and have this sentence simply state that the agencies have jointly determined that the NHTSA models "are appropriate models to use to support both analyses"

"For the reasons discussed throughout today's final rule, the agencies have jointly determined that Autonomie and the CAFE model have significant technical advantages, including important additional features, and are therefore the more appropriate models to use to support both analyses." The agencies find, therefore, that the CAFE model's approach of retaining a full set of vehicle simulation results throughout the compliance simulation to be technically superior and more transparent.

Page 82 – Another instance where EPA comments recommended the "technically superior" text be changed to "reasonable"

"The agencies find, therefore, that the CAFE model's approach of retaining a full set of vehicle simulation results throughout the compliance simulation to be technically superior and more transparent."

Page 83 – EPA had commented that the "technically superior" language be changed to "reasonable and appropriate" (consistent w/NPRM)

"Especially given these refinements and updates, as discussed throughout this rule, EPA maintains that for CO₂ rulemaking analysis, Autonomie and the CAFE model are technically superior to EPA's ALPHA and OMEGA models."

2. Factually Inaccurate text has still not been corrected in numerous places.

EPA's goal regarding these detailed comments (red in the 2/5/2020 markup provided to NHTSA) is to improve the legal defensibility of the final rule. It is unhelpful for EPA's future defense of the final rule GHG standards if the preamble and RIA had numerous factual inaccuracies which litigants can easily disprove.

For example,

Page 81 – This statement below is factually inaccurate, and we have provided NHTSA details on why this statement is not true. We requested that it be deleted.

- *“Also, while Autonomie uses engine maps as inputs, and EPA developed engine maps that it could have used for today’s analysis, EPA declined to do so, because these engine maps had technical flaws, as discussed below in Section 0.”*

Page 265-277 -- Multiple factual inaccuracies about EPA’s ALPHA model should be deleted. For example, on page 277 there is this statement. The highlighted statement is false, and easily disproved, as EPA has published peer reviewed papers on this very issue – the validation of the ALPHA model for the simulation of hybrid powertrains – in 2013. It does not help the defensibility of the SAFE Final Rule to make statements that are false and so easily disproved.

- *“As summarized by the Alliance, ‘Autonomie was developed from the start to address the complex task of combining 2 power sources in a hybrid powertrain. However, [ALPHA] has not been validated or used to simulate hybrid powertrains.’*

Page 280 – Extreme factual inaccuracies regarding EPA’s engine benchmarking testing and ALPHA model should be deleted

Page 612 – Incorrect characterization of EPA’s prior work has not been corrected

- *“In contrast, EPA for the Draft TAR and Proposed Determination assumed that manufacturers could reduce frontal area as well as aerodynamic drag coefficient to achieve a 20 percent aerodynamic force reduction relative to an initial aerodynamic technology level.”*

Page 649 – Factually incorrect statements about the overall balance of driving shifting to newer vehicles has not been corrected.

- *“In combination with increased sales of new models, this transferred some driving that would have occurred with used cars and light trucks to newer and safer models, thus reducing the total costs of fatalities and injuries sustained in motor vehicle crashes.”*

3. Compliance section IX does not address any of EPA’s comments – still need to correct inaccurate characterizations of EPA’s compliance/flexibility programs and references to the Clean Air Act, including references to multipliers to reflect the NGV 2X multiplier

Page 1538 – references to multipliers have not been edited per EPA comments to reflect the NGV multiplier

“After considering comments and the level of stringency of the final revised standards, EPA is not adopting new incentives in the areas of credit multipliers, new incentives for hybrid vehicles, incentives for autonomous or connected vehicles, or alternative fueled vehicles, as part of this final rule.”

4. Reconciliation of cited analysis values in Section 8.A and elsewhere –EPA has commented on multiple occasions, we are not in a position to know whether the values cited in this section are currently accurate, as we have never received updated modeling tables since the October 3, 2019 runs. NHTSA should ensure that any cited modeling values are consistent across the rulemaking documents.